

**OPINION
75-53**

March 20, 1975 (OPINION)

Mr. H.J. Snortland
Assistant Superintendent of
Public Instruction
State Capitol
Bismarck, ND 58505

Dear Mr. Snortland:

This is in reply to your letter of March 14, 1975, relative to special education children. You state the following facts and questions:

"There are several school districts and cooperative special education programs which have requested information regarding the legality of providing special education programming for preschool age handicapped children.

"Under Section 15-59-01, North Dakota Century Code, the exceptional child is defined as a 'natural person to the age of twenty-one' which would seem to allow the provisions of the subsequent sections of Chapter 15-59 to apply to handicapped children below school age.

"If this is true, then may the mandate for special education also apply to these children? Would it allow, also, that state special education reimbursement may be paid? We assume that state foundation aid would not be applicable."

Section 15-47-01 of the N.D.C.C., as amended, defines the normal age at which a child may start school. This section, as presently written, requires a child to be six years of age by midnight August 31st to start school except as therein provided. (We have not considered herein any bills pending in the current Legislative Assembly which might affect this matter.)

However, Section 15-59-01(1) of the N.D.C.C., as amended, provides:

"As used in this chapter:

1. 'Exceptional child' means a natural person to the age of twenty-one, who, because of mental, physical, emotional, or learning characteristics, requires special education services. This may include a handicapped child or a gifted child.

* * *

We note that with respect to the definition of exceptional child, the statute specifies a maximum but not a minimum age.

Section 15-29-01(2) of the N.D.C.C., as amended, defines "special education" to mean "classroom, home, hospital, institutional, or

other instruction to meet the needs of handicapped children, transportation, and corrective and supporting services required to assist exceptional children in taking advantage of, or responding to, educational programs and opportunities."

Section 15-59-04 of the N.D.C.C., as amended, requires school districts to provide special education to handicapped children in accordance with the provisions of the statutes. Subsection 3 of Section 15-59-02 of the N.D.C.C., as amended, defines a "handicapped child" as "a child who is mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, emotionally disturbed, specific learning disabled, crippled, or otherwise health impaired who by reason thereof requires special education and related services."

Section 15-59-06 of the N.D.C.C. provides in part:

"Exceptional children who are enrolled in approved programs of special education shall be deemed to be regularly enrolled in the school and school districts providing such programs and shall be included in determination of elementary and high school per-pupil payments from the county equalization fund whether or not such pupils are regularly attending school in the school or school district receiving such payments."

The statute further provides for additional payments to schools offering special education upon the conditions set forth therein.

In view of the fact that the statutes on special education are special statutes which govern a particular program, and in view of the fact that such statutes do not contain a minimum age limit for beginning special education classes, it is our opinion that special education may be offered to handicapped children below the starting school age specified in Section 15-47-01 of the N.D.C.C. It is our further opinion that Section 15-59-06 of the N.D.C.C., as amended, allows state special education reimbursement to be paid as well as state foundation aid payments since the statute provides that exceptional children are to be included in the determination of elementary and high school per-pupil payments from the county equalization fund.

Sincerely,

ALLEN I. OLSON

Attorney General